IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11675 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AGRICULTURAL PRODUCE MARKET COMMITTEE, - Petitioner(s)
Versus
DEPUTY MAMLATDAR, KHAMBHAT & 8 - Respondent(s)

==========

Appearance :

MR BB NAIK for Petitioner(s) : 1,MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
MR.SIRAJ GORI AGP for Respondent(s) : 1 - 2, 8,
RULE NOT RECD BACK for Respondent(s) : 3 - 4.
RULE SERVED for Respondent(s) : 5 - 9.
MR AD OZA for Respondent(s) : 6,
MR SK JHAVERI for Respondent(s) : 7,

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 14/09/2006

ORAL JUDGMENT

1.Leave to amend the title of respondent No.6 as 'Madhya Gujarat Vij Company' in place of the then Gujarat Electricity Board.

2.The short facts of the case are that the petitioner is the purchaser of property bearing Survey No.505 admeasuring 67077 Sq.mtrs. and another property bearing Survey No.521 admeasuring 9915 Sq.mtrs. total 76,992 Sq.mtrs. situated at Taluka Khambhat, District Anand. The aforesaid property came to be purchased by the petitioner as per Registered Sale Deed dated 25.02.2004 executed by the Official Liquidator, Gujarat on behalf of the Ram Prakash Spinning Mills Ltd. Khambhat (hereinafter referred to as “Company in Liquidation”) and the said sale deed was executed in pursuance of the confirmation of the sale by this Court (Coram: A.R. Dave, J.) as per order dated 14.02.2003 in O.L. Report No.12 of 2003 in Company Petition No.328 of 1997 read with order dated 06.09.2003 of this Court (Coram: C.K. Buch, J.) in Company Application NO.413 of 2003 in Company Petition No.328 of 1997. There is no dispute on the aforesaid aspects and also on execution of the sale deed in favour of the petitioner against the consideration of Rs.97,02,750/-. There is also no dispute on the point that the aforesaid sale deed is registered with the Sub Registrar and the property in question is received by the petitioner pursuant to the sale deed.

3.It appears that based on the Registered Sale Deed, Entry No.10453 dated 10.04.2004 came to be mutated in the revenue record by the Deputy Mamlatdar. However, upon the verification of the record, it was found by the Deputy Mamlatdar that the names of all the partners were mentioned and in the record, there is also encumbrance of Gujarat Electricity Board, Sales Tax Officer, Khambhat Municipality and Mamlatdar, Khambhat and, therefore, the entry was cancelled. It appears that the petitioner carried the matter before the Deputy Collector by preferring the appeal and the Deputy Collector as per the order dated 11.08.2004, dismissed the appeal by confirming the order of the Deputy Mamlatdar for cancelling the Entry No.10453. It is under these circumstances, the petitioner Market Committee has approached to this Court by preferring the present petition.

4.I have heard Mr.B.S.Patel, learned counsel appearing for the petitioner, Mr.Siraj Gori, learned A.G.P. appearing for the State, Official Liquidator, Mr.A.D. Oza, learned counsel appearing for the respondent No.6 and Ms. Jhaveri for Mr.S.K. Jhaveri, learned counsel appearing for the respondent No.7.

5.As per the provisions of Bombay Land Revenue Code more

particularly Section 13C of the Code, when any right in any land is acquired, the acquisition of right is to be reported to village accountant but as per the proviso of Section 135C, there is no obligation to report if the rights are acquired by virtue of the registered document. Therefore, it appears that when the rights are acquired by virtue of the registered document, the legislature has exempted such person to report regarding the acquisition of the right and because as per the scheme of the Code read with the Rules, the intimation is being received by the Village Accountant and based on the same, entry for acquisition of the right as per registered sale deed is required to be mutated as per Section 135C of the Code. After the acquisition of rights, if the objections are received, the procedure as per Section 135D is required to be followed which in the case was followed but the entry is cancelled. The Deputy Collector has also confirmed the said order.

6. As per the decision of this Court in case of Zaver Savji Patel (through power of attorney holder) Ashok Zaver Patel Vs. Kanchanben Nathubhai Patel reported in 2005(3) GLH 657, the entry based on the registered sale deed, in normal circumstances, is required to be

reflected in the revenue record. It appears that in the present case, the lower authorities have cancelled the entry on the ground that there was outstanding dues/encumbrance of the Sales Tax Authority, Gujarat Electricity Board and Khambhat Municipality. Of course, in the order of the Deputy Collector, he has also proceeded on the basis that the name of the person who executed the sale deed is not entered in the revenue record and, therefore, the sale deed is not in accordance with the provisions of the Stamp Act and, therefore, the order for cancellation of the entry is confirmed.

7. There is no dispute on the point that the property was held by the company, which was ordered to be liquidated. Once a company was ordered to be liquidated, its properties or its assets are to be realised as per the provisions of the Companies Act through the Official Liquidator who has to work under the supervision of this Court exercising power as the Company Court. As per the provisions of the Companies Act, once the company is ordered for winding up, based on proceedings against the company in liquidation remains stayed and the proceedings can continue if such a leave is granted by the Company Court. Therefore, as

per the scheme of the Companies act, so far as the properties in relation to the Company in liquidation are concerned, they are to be realised through the Official Liquidator and dues of the creditors or the secured creditors or unsecured creditors including the dues of the State Government or the Municipality or the Electricity, as the case may be, are to be considered and to be realised from the properties of the company in liquidation as provided under the provisions of the Companies Act. Therefore, when the Official Liquidator of this Court in pursuance of the order passed by this Court, sitting as a Company Court, has executed a sale deed, it was required for the revenue authority for maintaining the revenue record, to enter the transaction of the Registered Sale Deed by mutating the entry for such purpose. It cannot be disputed that the petitioner in whose favour, registered document is executed did not acquire any right in the property. Once there is a right acquired in the property by a registered document, it must be reflected in the revenue record unless the objector contended that the sale deed is bogus or not executed at all or the executor of the sale deed was laking of inherent jurisdiction or authority to execute the sale deed. In

the present case, such is not the situation and the sale deed is executed by the Official Liquidator of this Court and that too in pursuance of the order passed by this Court sitting as a Company Court. Therefore, it was required for the Revenue Authority to certify the entry based on the Registered Sale Deed and instead of certifying the entry, the authority has cancelled entry. It can be said that there is error of jurisdiction on the face of record committed by the lower authority in the matter of certification of the entry.

8. Much grievance is raised on behalf of respondent No.6, Khambhat Municipality and Sales Tax Officers by the learned respective counsel appearing for them contending, inter alia, that when the encumbrance/outstanding dues were recorded, the entry was rightly not certified on the ground that if the entry is certified, the rights of the respondent No.6, Khambhat Municipality or the Sales Tax Officers or of the State Government would be adversely affected. Mr. Patel, learned counsel appearing for the petitioner submitted that since the property is purchased by the petitioner under the orders of the Company Court and sale deed is executed, the burden/encumbrance showing

the outstanding amount of the aforesaid respondents, would be required to be deleted from the revenue record. However, he submitted that for that such purpose, he should resort to the appropriate proceedings before the appropriate forum. In my view, even if such encumbrances are continued to have been shown in the revenue record, the entry was required to be mutated with such alleged encumbrances leaving the parties to resort to appropriate remedy for enforcement of such claim and/or for deletion of such claim. Since the question of enforcement of the claim or deletion thereof has not arisen, and the parties are to be relegated to the appropriate remedy, in accordance with law, I find it proper not to conclude on the said aspect. Suffice it to say that either parties shall be at the liberty to move appropriate forum for enforcement of the claim and/or for deletion of such claim.

9. Mr.Oza, learned counsel appearing for the respondent No.6 raised the contention that the order is passed by the Deputy Collector and the petitioner has the alternative remedy available of preferring revision before the Collector and thereafter, before the State Government as per the provisions of the Bombay Land

Revenue Code and, therefore, he submitted that this Court may not entertain the petition and may relegate the petitioner to resort to alternative statutory remedy. It is true that in normal circumstances, by way of self-imposed restriction, this Court may not entertain the petition under Articles 226 and 227 of the Constitution of India, if the person concerned has alternative statutory remedy. However, it is also well settled that the existence of alternative remedy is not a bar to the power of this Court under Articles 226 and 227 of the Constitution of India. In the present case, the petitioner is statutory body who has purchased the land in question in pursuance of the order passed by this Court sitting as a Company Court and the sale deed is executed by the Official Liquidator in pursuance of the order passed by this Court and this Court is even as on today, seized with the winding up proceedings of the company in liquidation. Since the matter is pertaining to giving effect to the order passed by this Court sitting as a Company Court, for execution of the Registered Sale Deed by the Official Liquidator of the High Court and in spite an order of this Court, the revenue authorities have not given effect by not mutating the entry of a Registered Sale Deed executed

by the Official Liquidator of the High Court in pursuance of the order of this Court and as the dispute is between the petitioner in capacity as one statutory body and respondent Nos.5,6,7 and 8 which are also statutory body, the Government company and the nationalised bank and as the larger question is involved for giving effect to the order of this Court by the Revenue Authority, it would not be a case to decline the entertainment and exercise of writ power of this Court under Article 226 on the ground of existence of alternative statutory remedy. Further, the matter is now considered at the final hearing stage. Therefore, under the aforesaid circumstances, I find it proper not to relegate the petitioner to approach before the alternative forum and to examine the matter on the merits of the case and, therefore, the contention of Mr.Oza is not accepted in view of the aforesaid peculiar facts and circumstances and the involvement of the larger issue in the present petition.

10.In view of the above, the impugned orders passed by the Deputy Mamlatdar for cancellation of the entry and its confirmation by the Deputy Collector are quashed and set aside. It is made clear that consequently, Entry No.10453 dated 10.04.2004 shall stand restored to

the revenue record. However, it is clarified that the concerned respondents who are claiming to recover the outstanding amount or the petitioner who is seeking deletion of the claim made, shall be at the liberty to resort to appropriate proceedings as may be permissible in law. If such proceedings are resorted, the rights and contentions of both the sides to that extent shall remain open for enforcement and/or deletion of the claim. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

Hitesh